UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

KAMAL QAIS AL DOSARI, Plaintiff, v. LORETTA LYNCH, United States Attorney General; JEH JOHNSON, Secretary Department of Homeland Security REBECCA ADDUCCI, Field Office Director, Detroit Immigration and Customs Enforcement KATHY ROSE, Jail Administrator, Geauga County Jail	No: 1:16-cv-2823

PETITION FOR WRIT OF HABEAS CORPUS AND FOR DECLARATORY AND INJUNCTIVE RELIEF

The Petitioner herein, Kamal Qais Al Dosari, respectfully requests that this Court issue a writ of habeas corpus and/or any other relief it deems appropriate. A writ of habeas corpus is appropriate because Petitioner's detention by Respondents is unlawful. He has been detained by Immigration and Customs Enforcement ("ICE") since May 6, 2015. His removal is not reasonably foreseeable. His continued detention is in violation of the immigration laws and the United States Constitution.

In support of his Petition, Petitioner would state the following:

I. Custody:

1. Petitioner is in the physical custody of Immigration and Customs Enforcement ("ICE"). Petitioner is detained at the Geauga County Jail at 12450 Merritt Road, Chardon, Ohio 44024. The Geauga County Jail contracts with ICE to house immigration detainees. Petitioner is under the direct control of Respondents and their agents.

2. Petitioner has a final order of removal. His removal order became final on July 23, 2015.

3. Petitioner has been detained in ICE custody since May 6, 2015.

II. JURISDICTION

4. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act, 5 U.S.C. § 701 et seq. This Court has habeas corpus jurisdiction

pursuant to 28 U.S.C. § 2241. The Court may also exercise jurisdiction under 28 U.S.C. § 1331 and may grant relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

III. VENUE

5. Venue lies in the United States District Court for the Northern District of Ohio as this is where Petitioner is being detained by Respondents. *See* 28 U.S.C. § 1391(e).

IV. PARTIES

6. Petitioner is a citizen of Iraq.

7. He entered the United States on August 14, 2008 as an immigrant. His status was adjusted to lawful permanent resident on February 7, 2011.

8. Petitioner was ordered removed on July 23, 2015 as a result of his 2013 convictions for robbery and impersonation of certain officers.

9. Petitioner is detained by Immigration and Customs Enforcement pursuant to 8 U.S.C. § 1231.

10. Respondent Loretta Lynch is the Attorney General for the United States and responsible for the administration of ICE and the implementation and enforcement of the Immigration and Nationality Act ("INA"). As such, Ms. Lynch has ultimate custodial authority over Petitioner.

11. Respondent Jeh Johnson is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the enforcement of the INA. As such, Mr. Johnson is the legal custodian over Petitioner.

12. Respondent Rebecca Adducci is the ICE Field Office Director of the Detroit Field Office. The Detroit Field Office has jurisdiction over the immigration detainees in Ohio.

13. Respondent Kathy Rose is the Jail Administrator of the Geauga County Jail in Chardon, Ohio. The facility contracts with ICE to house immigration detainees.

V. FACTUAL ALLEGATIONS

14. Petitioner has resided in the United States since 2008. He entered as a refugee and adjusted his status to a lawful permanent resident on February 7, 2011.

15. Petitioner's mother, father, and siblings are all United States citizens. Petitioner would live with his parents upon release from custody.

16. On June 27, 2013, Petitioner was convicted of two counts of robbery and impersonation of certain officers in the Cuyahoga County Court of Common Pleas. He was sentenced to 30 months of incarceration.

17. On May 6, 2015, the Department of Homeland Security issued a Notice to Appear (Form I-862) alleging that Petitioner was subject to removal from the United States based on his criminal record. (Exhibit A, I-862) Specifically, the Notice to Appear alleges that Petitioner is subject to removal pursuant to INA § 237(a)(2)(A)(iii)(aggravated felony) and INA § 237(a)(2)(A)(ii)(two crimes involving moral turpitude).

18. Petitioner initially decided not to fight his removal case. As a result, he was ordered removed on May 10, 2015.

19. Petitioner subsequently filed a motion to reopen asking for an opportunity to apply for withholding of removal and relief under the Convention Against Torture.

20. The motion was granted and Petitioner was given a hearing to apply for relief from removal.

21. On July 23, 2015, the Immigration Judge ordered Petitioner removed to Iraq. (Exhibit B, Immigration Judge's Order) Both parties waived appeal. Thus, Petitioner's removal order was final at that time.

22. DHS has not been able to effectuate Petitioner's removal to Iraq. At this point, DHS has been unable to get a travel document to remove him to Iraq.

23. On October 19, 2015, the Cleveland Field Office of Immigration and Customs Enforcement issued a Decision to Continue Detention. (Exhibit C, 10/19/15 Decision) The decision states that "You have been ordered removed from the United States. The issuance of a travel document is currently pending with your Consulate."

24. Petitioner's file was subsequently transferred to the ICE Headquarters for the Office of Enforcement and Removal Operations in Washington, D.C.

25. On February 26, 2016, ICE issued a Decision to Continue Detention. (Exhibit D, 2/26/16 Decision) The decision states:

> "ICE is currently working with the government of Iraq to secure a travel document for your removal from the United States. A travel document from the Government of Iraq is expected, therefore you are to remain in ICE custody at this time."

26. On July 29, 2016, ICE in Washington issued a decision to continue detention. (Exhibit E, 7/29/16 Decision) The decision states:

> "ICE is currently working with the government of Iraq to secure a travel document for your removal from the United States. A travel document from the Government of Iraq is expected, therefore you are to remain in ICE custody at this time."

27. On November 3, 2016, ICE in Washington issued a decision to continue detention. (Exhibit F, 11/3/16 Decision) The decision states:

> "ICE is currently working with the government of Iraq to secure a travel document for your removal from the United States. A travel document from the Government of Iraq is expected, therefore you are to remain in ICE custody at this time."

28. In support of his custody reviews, Petitioner submitted documents showing that he has cooperated with ICE, that he is not a flight risk, and that he is not a danger to the community.

29. Petitioner has fully cooperated with ICE in obtaining his travel document. Petitioner personally appeared at the Iraqi Consulate on two occasions to assist in obtaining a travel document. However, a travel document has yet to be issued.

VI. STATEMENT OF THE LAW AND LEGAL BASIS FOR RELIEF SOUGHT

30. Petitioner incorporates paragraphs 1-29 of the Petition.

The "Removal Period" and Custody Reviews:

31. A foreign national with a removal order shall be detained during the "removal period," which is 90 days from the date that the removal order becomes administratively final. 8 U.S.C. § 1231(a).

32. If a foreign national is not removed during the removal period, "the alien, pending removal, shall be subject to supervision under the regulations prescribed by the Attorney

General." 8 U.S.C. § 1231(a)(3). The regulations allow for continued detention beyond the removal period and contain a list of factors that should be considered in making the custody determination. 8 C.F.R. § 241.4(a), (e).

33. The initial custody determination and any custody determination concluded in the three-month period immediately following the expiration of the "removal period" shall be made by the local ICE Detention and Removal Office. 8 C.F.R. § 241.4(c).

36. Subsequently, custody determinations are transferred to the Headquarters Post Detention Unit (HQPDU). 8 C.F.R. § 241.4(c). The initial HQPDU review will normally be conducted "at the expiration of the three-month period after the 90-day review or as soon thereafter is practicable." 8 C.F.R. § 241.4(k)(2)(ii).

Indefinite Detention Is a Violation of the United States Constitution:

38. Petitioner's indefinite detention violates his right to due process, as guaranteed by the Fifth Amendment to the United States Constitution.

39. The due process clause of the Fifth Amendment forbids the Government to "deprive[e]" any "person . . . of . . . liberty . . . without due process of law." U.S. Const. 5th Amendment. "Freedom from imprisonment – from government custody, detention, or other forms of physical restraint – lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The United States Supreme Court has stated that government detention violates the due process clause "unless it is ordered in a criminal proceeding with adequate procedural protections" or "in certain special and 'narrow' nonpunitive 'circumstances,' . . . "where special justification, such as harm-threatening mental illness, outweighs the 'individuals constitutionally protected interest in avoiding physical restraint.'" *Id. citing Kansas v. Hendricks*, 521 U.S. 346, 356 (1997).

39. The government is authorized to detain foreign nationals "only as long as 'reasonably necessary' to remove them from the United States." *Clark v. Martinez*, 543 U.S. 371, 373 (2005)(*quoting* Zadvydas, 533 U.S. at 689, 699). Reading 8 U.S.C. § 1231(a)(6) to authorize indefinite detention would render the statute unconstitutional. *Zadvydas*, 533 U.S. at 690. Therefore, the statute was construed to have a "reasonable time" limitation on detention. *Id.* at 682.

40. In *Zadvydas*, the United States Supreme Court held that detention of a foreign national for removal based on his criminal record will be presumptively reasonable for up to six months. *Id.* at 701. However, "after this 6-month period, once the alien provides good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing." *Id.* "[F]or detention to remain reasonable, as the period of prior postremoval confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Id.*

Petitioner's Continued Detention Violates His Constitutional Rights:

41. Petitioner's continued detention violates his due process rights through a derivation of the core liberty interest in freedom from bodily restraint. While Respondents have an interest in detaining a person with a final order of removal to effectuate removal, the interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. Petitioner has been detained in well excess of the presumptively reasonable time period set forth by the Supreme Court in *Zadvydas*. He has

provided good reason to believe that he will not be removed in the reasonably foreseeable future.

42. Petitioner has been detained almost 16 months since his final order of removal.

43. ICE's last three custody determinations all state the same exact thing about obtaining a travel document. It is telling that ICE has been working to obtain a travel document for well over a year and has apparently made no progress.

44. Petitioner has fully cooperated in obtaining a travel document. Despite his cooperation, a travel documents has not been issued and Petitioner does not believe a travel document will be issued is the foreseeable future.

45. The six month presumptively reasonable removal period has expired. Petitioner has still not been removed and continues to languish in detention.

46. Petitioner's indefinite detention violates his due process rights under the Fifth Amendment of the United States Constitution.

47. Petitioner’s post removal detention is almost 16 months, which is far in excess of the presumptively reasonable period and he has established that there is no significant likelihood of removal in the reasonable foreseeable future. Thus, he has stated a claim under *Zadvydas*. Therefore, he is entitled to a grant of his petition.

48. Petitioner has exhausted all administrative remedies.

VII. PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Grant the writ of habeas corpus;

(3) Issue an Order stating that Petitioner's continued detention is unreasonable, contrary to law and unconstitutional;

(4) Issue an order requiring Petitioner's immediate release from ICE custody.

(5) Grant any other and further relief that this Court deems just and proper.

(6) Award attorney's fees.

Respectfully submitted,

s/Margaret Wong
Margaret Wong, Esq.
Attorney for Petitioner
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Cleveland, Ohio 44114
(216) 566-9908
(216) 566-1125 (fax)

CERTIFICATE OF SERVICE

I, Margaret W. Wong, certify that I served the following complaint and attached exhibits to:

- LORETTA E. LYNCH,
  U.S. Attorney General
  U.S. Department of Justice
  950 Pennsylvania Avenue, NW
  Washington, DC 20530-0001

- JEH JOHNSON
  Secretary
  Department of Homeland Security,
  Washington, DC 20528

- REBECCA ADDUCI
  Filed Office Director, Detroit Immigration and Customs Enforcement;
  333 Mt. Elliott St
  Detroit, MI, 48207

- Lieutenant Kathy Rose
  Administrator, Geauga County Jail
  12450 Merritt Road,
  Chardon, Ohio 44024

- Carol S. Rendon
  U.S. Attorney, Northern District of Ohio
  801 West Superior Avenue; Suite 400
  Cleveland, Ohio 44113-1852

this 18th day of November 2016.

s/Margaret Wong

Margaret W. Wong, Esq.
Margaret Wong & Associates
3150 Chester Ave.
Cleveland, Ohio 44114
(216) 566-9908

LIST OF ATTACHMENTS

Exhibit A, I-862

Exhibit B, Immigration Judge’s Order

Exhibit C, 10/19/15 Decision

Exhibit D, 2/26/16 Decision

Exhibit E, 7/29/16 Decision

Exhibit F, 11/3/16 Decision